

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY TEHRAN

C O N F I D E N T I A L STATE 249548

E.O. 11652:GDS

TAGS:MASS, IR

SUBJECT: SHAH'S REQUEST FOR INFORMATION CONCERNING THIRD-
COUNTRY TRANSFERS

REF: TEHRAN 6479

1. FOLLOWING IS GUIDANCE ON RESPONSE TO SHAH'S REQUESTS
(PARAS. 2-3 REFTTEL) FOR INFORMATION ABOUT USG REGULATIONS
GOVERNING TRANSFER TO THIRD COUNTRIES OF MILITARY ITEMS PRO-
DUCED IN A FOREIGN COUNTRY BUT USING TECHNICAL DATA FROM
THE U.S.

2. US LEGISLATION PROVIDING FOR CONTROLS ON THE TRANSFER OF
DEFENSE EQUIPMENT AND TECHNOLOGY IS INTENDED TO ASSURE THAT
EXPORT OF SENSITIVE ITEMS IS IN ACCORD WITH US FOREIGN
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POLICY. EXISTING LEGISLATION EXTENDS THESE CONTROLS TO ALL

EXPORTS OF DEFENSE EQUIPMENT AND TECHNOLOGY, NOT JUST TO THOSE ITEMS IN THE INVENTORY OF US FORCES. TO LIMIT SUCH CONTROLS TO ITEMS IN USG INVENTORY WOULD NEGATE THE PURPOSE OF EXPORT CONTROLS, SINCE NOT ALL POTENTIAL EXPORTS OF DEFENSE EQUIPMENT AND TECHNOLOGY FALL IN THAT CATEGORY.

3. THERE ARE TWO PRINCIPAL SOURCES OF GOVERNMENTAL RESTRICTIONS ON THE TRANSFER OF DEFENSE TECHNOLOGY. THE FOREIGN MILITARY SALES ACT (FMSA) REQUIRES PRIOR USG CONSENT FOR THE TRANSFER TO THIRD COUNTRIES OF DEFENSE ARTICLES SOLD BY THE USG UNDER THAT ACT. THIS IS CONSTRUED AS EXTENDING TO DEFENSE ARTICLES PRODUCED ABROAD WITH TECHNICAL DATA PROVIDED BY THE USG UNDER THE ACT. THE TERMS OF THE FMSA PERMIT NO LATITUDE FOR OTHER THAN CASE-BY-CASE APPROVALS. THE SECOND SOURCE IS THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR, SEE 10 FAM 180 APPENDIX A), PROMULGATED UNDER THE AUTHORITY OF SECTION 414 OF THE MUTUAL SECURITY ACT OF 1954, AS AMENDED. ITAR GOVERNS COMMERCIAL EXPORTS OF ITEMS AND TECHNOLOGY ON THE US MUNITIONS LIST AS WELL AS MANUFACTURING LICENSE AGREEMENTS FOR PRODUCTION ABROAD OF SUCH ITEMS. IT REQUIRES AS A CONDITION OF APPROVAL OF LICENSE AGREEMENTS THAT THE LICENSEE AGREE IT WILL NOT WITHOUT PRIOR USG APPROVAL TRANSFER ITEMS IT PRODUCES USING THE PURCHASED TECHNOLOGY TO ANY PERSON OUTSIDE AN AREA DESIGNATED IN THE LICENSE AS THE APPROVED SALES TERRITORY FOR THE ITEMS. UNDER ITAR THE USG CAN IN THEORY APPROVE A BROAD SALES TERRITORY IN THE ORIGINAL LICENSE. HOWEVER, IT IS US PRACTICE IN KEEPING WITH OUR RESPONSIBILITIES TO CARRY OUT THE INTENT OF SECTION 414 OF THE ACT TO LIMIT SALES TERRITORIES CLOSELY, IN MOST CASES LIMITED TO THE COUNTRY WHICH PURCHASED THE TECHNOLOGY. APPROVAL FOR TRANSFERS OUTSIDE AN APPROVED SALES TERRITORY IS GRANTED ONLY ON A CASE-BY-CASE BASIS.

4. IN ADDITION TO THESE GOVERNMENTAL RESTRICTIONS THERE MAY BE IMPORTANT COMMERCIAL CONSIDERATIONS. IN APPLYING FOR LICENSE FOR EXPORT OF TECHNOLOGY A US FIRM INCLUDES A PROPOSED SALES TERRITORY BASED ON ITS OWN DETERMINATION OF HOW IT WISHES TO SHARE THE POTENTIAL MARKET FOR THE PRODUCT WITH THE FOREIGN PURCHASER. IN REVIEWING THE APPLICATION THE USG MAY REQUIRE A MORE LIMITED TERRITORY THAN PROPOSED

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BY THE FIRM. AFTER A LICENSE IS GRANTED, REQUESTS FOR APPROVAL OF SALES OUTSIDE OF THE LICENSED SALES TERRITORY MUST BE SUBMITTED TO THE USG BY THE AMERICAN FIRM, NOT BY THE FOREIGN PURCHASER; THE AMERICAN FIRM MAY REFUSE TO SUBMIT SUCH REQUESTS IN ORDER TO PROTECT ITS OWN MARKET AREA. USG HAS NO RPT NO CONTROL OVER SUCH DECISIONS.

5. REGARDING THE APPLICATION OF US LAWS AND REGULATIONS TO

THE SPECIFIC CASES MENTIONED BY THE SHAH, PARA 2 ABOVE GIVES THE RATIONALE FOR REQUIRING USG APPROVAL OF THE TRANSFERS TO THIRD COUNTRIES OF ANY GUNS THE GOI MAY PRODUCE UNDER THE CONTRACT WITH ARES. EVEN UNDER ITAR, FOR GUNS AND MILITARY CARGO HELICOPTERS AND OTHER ITEMS OF SIGNIFICANT CHARACTER IT HAS GENERALLY BEEN US PRACTICE IN APPROVING MANUFACTURING LICENSE AGREEMENTS TO MAKE PROVISION FOR SUBSEQUENT CASE-BY-CASE CONSIDERATION BY APPROVING ONLY RELATIVELY LIMITED LICENSED SALES TERRITORIES. FOLLOWING SUCH A PRACTICE PROVIDES A PROTECTION SHOULD THAT BE NECESSARY

FOLLOWING CHANGES IN POLITICAL RELATIONSHIPS; US RELATIONS WITH A COUNTRY IN A BROAD LICENSED SALES AREA COULD CONCEIVABLY SO CHANGE IN CHARACTER THAT WE WOULD NOT WISH THAT COUNTRY TO BE IN A POSITION TO CONTINUE TO BUY MILITARY EQUIPMENT BASED ON US TECHNOLOGY.

6. IN DISCUSSING THE HELICOPTER ISSUE WITH THE SHAH WE SUGGEST YOU TAKE THE LINE THAT EXPERIENCE HAS SHOWN THAT CASE-BY-CASE APPROVALS ARE NOT NECESSARILY ONEROUS AND THAT THE USG WILL BE PREPARED TO GIVE PROMPT CONSIDERATION TO GOI REQUESTS FOR APPROVAL OF TRANSFERS OF HELICOPTERS THAT MAY BE COPRODUCED IN IRAN. WE ASSUME THAT THE FIRST FEW HUNDRED HELICOPTERS PRODUCED IN IRAN WILL BE FOR DOMESTIC NEEDS AND FEW REQUESTS FOR TRANSFER WOULD COME UP IN FIRST FEW YEARS OF PRODUCTION. WHEN IRANIAN HELICOPTER INDUSTRY HAS DEVELOPED TO POINT WHERE LARGE EXPORTS ARE FEASIBLE, IF THE AMERICAN FIRM OWNING THE TECHNOLOGY IS WILLING, WE WOULD BE PREPARED TO REVIEW THE QUESTION OF A LARGER SALES TERRITORY. WE CAN MAKE NO COMMITMENTS AT THIS TIME. INGERSOLL

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